IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

Bail Appl..No. 6961 of 2007()

CRIME NO. 810/07 OF THODUPUZHA POLICE STATION

PETITIONER/2ND ACCUSED

K.R.JOSEPH, AGED 42 YEARS,
S/O RAPHAEL, KUZHIKANDATHIL HOUSE,
MANNTHANCHERI, MANAKADU VILLAGE,
ARKUZHA P.O., THODUPUZHA.

BY ADV. SRI.JOSE J.MATHAIKAL

RESPONDENTS: STATE

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
POLICE STATION, THODUPUZHA, IDUKKI DISTRICT.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6961 of 2007

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Dated this the 20th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. He faces allegations in a crime registered under Section 326 r/w. 34 I.P.C. The crime, as it was registered, was against two named persons and two others identifiable by sight. On subsequent investigation those two persons, who are identifiable, have been dropped from the array of accused. That leaves the case with two persons alone on the array. About the first accused there is no controversy. So far as the second accused is concerned, the defacto complainant's statement in the F.I. statement is that the second accused is a person, who was addressed by the first accused as Unni. Subsequent investigation allegedly revealed that the petitioner is not known by the name Unni. He has only an alias name Kunju. The defacto complainant in the course of further questioning is alleged to have stated that he had wrongly stated earlier that the co-accused

had addressed the first accused as Unni, but he was really addressed as Kunju. It is thus that the prosecution tries to justify the continuance of the case with the petitioner in the array of accused.

2. The learned counsel for the petitioner then points out that even if the petitioner were the second accused, no specific overt act whatsoever is alleged against the petitioner. But the first accused is alleged to have indulged in the culpable overt act. He is alleged to have used his umbrella to cause the injury and the injury caused is a fracture of the finger of the right hand of the defacto complainant. The learned counsel submits that there are circumstances generating doubt on the complicity of the petitioner. The petitioner is willing to co-operate with the investigators. He may not be compelled to endure the trauma of arrest and incarceration, submits the learned counsel.

3. The learned Prosecutor does not oppose the application. He only prays that appropriate conditions may be imposed.

4. I am satisfied, in the facts and circumstances referred above, that directions under Section 438 Cr.P.C. can be issued in favour of the petitioner, subject to appropriate conditions.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 27.11.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 28.11.2007 and 29.11.2007 and thereafter as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 27.11.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 27.11.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.50,000/- without any surety undertaking to appear before the learned Magistrate on 27.11.2007.

(R. BASANT)
Judge

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